



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 319

APPLICANT BT

RESPONDENT G Ltd

The Tribunal orders:

Application dismissed

Reasons

On 19 October 2022, BT visited the respondent's electronic ticketing website and booked a flight to [Country 1] transiting via [City 1] in the [Country 2]. He paid \$1,228.83 for the flight.

On 23 November 2023, when BT went to check in for the flight at [New Zealand] Airport, he was denied boarding, because he did not have the required transit visa to transit the [Country 2]. As his fare was non- refundable, he suffered a loss of \$1,228.83.

He then filed this application seeking reimbursement of that amount, alleging that the respondent had breached its duty of care to him by not adequately advising him of his need to obtain a transit visa.

The respondent's position

In a written submission, repeated at the hearing, the respondent declined to give compensation. The respondent submitted that when BT booked his ticket on the site, it had fully informed him on at least three occasions, that visa requirements were his responsibility.

This also included requiring him to finally click a button that confirmed he had read and understood the contents of his itinerary, the fare rules (including the fare being non- refundable) and the terms and conditions of the booking which included extracts as follows:

"I also agree that I have checked the flight and traveller information has been entered accurately and accept that visa and passport requirements are my responsibility."

"It is important that you ensure that you have valid passports, visas and re-entry permits which meet the requirements of immigration and other government authorities. Any fines, penalties, payments, or expenditures incurred as a result of such documents not meeting requirements of those authorities will be your sole responsibility."

"If you are travelling to or transiting through the [Country 2], please see <http://esta.chp.dhs.gov> or the important information regarding compulsory pre- registration for their visa waiver programme ("ESTA"). New Zealand passport holders will not be able to enter the [Country 2] without a valid [visa]."

BT's position

BT did not dispute the above, but strongly submitted that the respondent had nevertheless “ethically and legally” failed in its duty of care to him as a consumer.

In particular, he felt very strongly that additional personal contact, such as an email or even a phone call, should have been forthcoming from the respondent, with the goal of ensuring that he as a consumer, was fully appraised of essential requirements.

Without referring to any particular section of the Consumer Guarantees Act 1993 (“the Act”), BT frequently referred to NZ consumer law requirements and was emphatic the respondent had breached them.

Most notably he was likely referring to a supplier’s obligation to provide services with “*reasonable care and skill.*”

Did the respondent breach its obligation to provide its services with reasonable care and skill?

BT was emphatic it had not.

It was undoubtedly an extremely frustrating and distressing experience for him to arrive at the Airport expecting to board an international flight he had booked, to find he was turned away.

The potential for such a traumatic outcome, if a crucial aspect is overlooked, such as an expired passport, time limited passport, or in this case the absence of a visa, can be fatal to an otherwise carefully planned trip.

And for BT, the potential for that kind of outcome reinforced for him, that the respondent should have taken extra care, perhaps by way of personal contact or at least an email.

But I am required to look at the context objectively.

Booking on an “instant do it yourself electronic ticketing terminal” (as distinct from for example, booking through an agent) is a choice, and by its nature requires joint responsibility and joint care.

At the hearing, BT was impressively articulate and was clearly capable of understanding what was outlined on the site by the respondent. While there was much to read, it was presented in reasonably plain English and was not overly burdened with legalese.

The respondent did outline repeatedly on the site, that obtaining the required visa was his responsibility, and BT confirmed his acceptance. It is not easy for the tribunal to overlook that, but BT did not see that as fatal to his case, nor did he accept any responsibility for what occurred.

This is not a case of omission by the respondent. Given the nature of the instant booking device and its inherent risks for the supplier and the consumer if something is overlooked, my finding is that the respondent did make the appropriate effort on the site, to inform BT that obtaining visas was his responsibility.

Therefore, on balance, my finding is that the respondent did not fail in its duty to make the booking with reasonable care and skill. Accordingly, BT’s application is dismissed.

Finally in his introduction, BT understandably had much to say about his inability to make meaningful contact with an appropriate representative of the respondent, immediately after he had been declined boarding at the airport. It seems his first attempt referred him to a representative in the Philippines and for an extensive period he clearly felt “*on his own*” and “*unsupported by the respondent*” in endeavouring to resolve or obtain some explanation for his situation. I have some sympathy for him about this. However, my jurisdiction in this matter is limited to ascertaining whether there was a breach by the respondent at the time the booking was made i.e., when the contract between the parties crystallised. I note at the hearing, that in response to BT’s comments, the respondent’s representative did indicate a willingness to review their post booking customer relations.

Referee: John Hogan
Date: 19 June 2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20-working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.